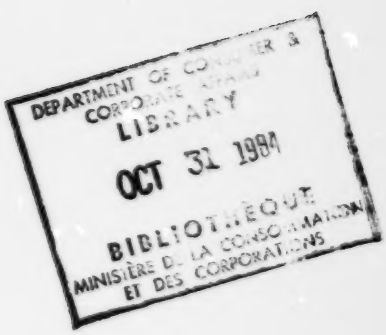
THE UNFOLDING DEBATE ON COMPETITION OR COLLECTIVE ACTION IN CANADIAN RAILWAYS



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COMPETITION OR COLLECTIVE ACTION IN CANADIAN RAILWAYS

INDEX

		Page
I.	Introduction and Executive Summary.....	1
II.	The Importance of Transport Costs.....	7
III.	Inadequacy of Intermodal Competition as a Safety Net For Rail Shippers and the Potential for Intramodal Competition	10
IV.	Shippers' Views: Consensus for More Competition.....	19
V.	The Crown Corporation Issue.....	29
VI.	Buying Groups.....	37
VII.	Staggers Act.....	41
VIII.	Issues and Altruism.....	47
IX.	Conclusions: What's Missing and What's Not....	51
X.	Recommendations: What's Next.....	56

APPENDIX - A - "Options Contained in (ELMA) Survey Question 14"

APPENDIX - B - Excerpt from a Speech on Buying Groups by Lawson Hunter

APPENDIX - C - Survey of Railway Users on Section 279 of the Railway Act - Shipper Questionnaire

"The views presented in this Report are those of the author and do not necessarily reflect the views of or positions of the Department of CCAC
Les points de vues exprimés dans cette étude sont ceux de l'auteur et ne reflètent pas nécessairement la position du Ministère."

INDEX OF CHARTS AND TABLES

		PAGE
Table II-1 :	Operating Revenue by Transport Mode (Mid-1970's)	Opposite 9
Table III-1 :	Modal Shares of Truck and Rail Traffic 1975-1977 Averages Inter-Provincial Movement All Goods Shipment Weight	Opposite 13
Table III-2 :	Modal Shares of Truck and Rail Traffic 1975/1977 Averages Intra-Provincial Movements All Goods Shipment Weight	Opposite 13
Table III-3:	Tonnages (0,000) For Various Geographic Areas and Product Groupings Where Neither Truck or Rail Accounts for 85 Per Cent of Shipments	Opposite 14
Table III-4:	Revenue ($000,000) For Various Geographic Areas and Product Groupings Where Neither Truck or Rail Accounts for 85 Per Cent of Shipments	Opposite 14
Chart IV-1 :	Distribution of Answers According to the Scale of Preference	Opposite 24
Table IV-1 :	Relative Preference of Policy Options: All Survey Respondents	Opposite 25
Table IV-2 :	Ranking of Options According to the Number of Respondents Answering "4" or "5"	26
Table IV-3 :	Ranking of Options According to the Number of Respondents Answering "4" or "5" relative to "1" or "2"	27

I. INTRODUCTION AND EXECUTIVE SUMMARY

Whether or not price competition in rail freight can have any real meaning in circumstances where two railways dominate overwhelmingly the movement of freight is an important economic question for Canada. Specifically, the powers under review stem directly from the statutory provisions of sections 279 and 32(2) of the Railway Act and Transport Act respectively. Both sections provide explicitly for railroad collective ratemaking. In the case of 279, this right is permissive while 32(2) requires the concurrence or participation of competing carriers in an agreed change between a carrier and a shipper.

In 1982, Transport Canada initiated a review of this issue and invited interested parties to participate. This report is submitted in partial response to that request. Early last year, the Bureau of Competition Policy prepared a preliminary paper, distributed to interested parties as requested by Transport Canada. And early this year, the Bureau expects to have available for limited distribution, an analysis of the views of almost three hundred shippers and consignees on the issue of rail competition.

Perhaps the only analytical focal point to date in this review process has been the report prepared by Prof. Heaver of UBC, commissioned by Transport Canada. Although that study did draw small arms fire from most quarters and heavier criticism from some, it can be said to have made a positive contribution to advancing the discussion by providing an early focus and identifying the main issues. As a number of participants have observed, insufficient information has been presented so far to resolve several of the more important issues. For this reason, although the debate has been advanced substantially since the review began a year or more ago, it is clear that remaining gaps in information prevent well-rounded policy formulation at this stage.

In these circumstances, the limited objective of this submission at this interim stage is three fold:

- to examine the principal arguments raised in defense of the regulatory status quo,
- to draw attention to gaps in information that must be bridged as a prerequisite to the implementation of a new policy on collective railway pricing,
- to recommend the best means of bringing this review process to successful completion.

Part II draws attention to the important contribution of transport costs to total costs across the broad range of goods-producing industries in Canada, pointing out that transport costs typically are larger than the combined bill for light, heat and power, or retail and wholesale margins combined. In particular, it is pointed out that export prices are more sensitive to transport costs than are prices of goods sold on the domestic market. Thus, the subject of railway competition is one likely of direct interest, to those concerned with Canada's international competitiveness.

The analysis in Part III shows that truck-rail competition is not sufficiently widespread across Canadian regions and commodity space to serve as an adequate check on the absence of intramodal competition in the movement of rail freight in Canada. Transport Canada data indicates that markets where neither truck nor rail are dominant account for only 15% of total traffic. Moreover, Survey data suggests that a much higher share of freight than expected is potentially subject to intramodal competition.

A cluster of highlights from the recent survey of rail users is presented in Part IV. This survey indicates, inter alia that: (a) U.S. rail deregulation has been beneficial from the viewpoint of Canadian shipper and consignees, and (b) there is a substantial consensus among

the majority of Canadian rail users not only that increased competition between the CNR and CP Rail would be welcomed, but also that collective ratemaking should be restricted to interlining (or joint) rates and that there is a range of appropriate means for protecting shippers from the abuse of the railroads' dominant position.

Part V sets out the contention that the removal of Section 279 will lead to unfair or predatory conduct by the CNR. Several considerations which allay the fears that arise from government ownership of Canadian National are presented.

Part VI challenges the argument that the existence and importance of shippers' buying groups justifies the continuation of collective railway pricing. The section also lays to rest the misconception that buying group activities have an immunity from the Combines Investigation Act, while at the same time observing that such activities are unlikely to offend the Act.

The discussion in Part VII of U.S. rail deregulation reveals the benefits conferred indirectly on Canadian shippers by the Staggers Act. It makes no effort however to deal with the effects on Canadian railways, which

on balance, appear to have been almost entirely negative. Again, more information and analysis on the supply-side implications for Canada is in order.

In Part VIII, collective railway pricing is discussed in general terms from the perspective of competition policy. In addition, the emergence of a rather fascinating altruism is identified in the debate over rail competition.

The conclusions and a summary are presented in Part IX. There is a consensus among rail users surveyed that collective rail pricing should be restricted to joint and interline rates. Those rates currently cover only 2.2 percent of rail freight and, as a result, the extent of the present scope for information exchanges between railroads and collective ratemaking is inappropriate. There is inadequate truck rail intermodal competition to ensure an efficient rail system. Markets where neither truck nor rail are dominant, and therefore where one would expect some intermodal competition, account for only about 15 percent of total truck-rail freight in Canada. The survey of rail users found that 45 percent of the total freight captive to rail is potentially subject to intramodal competition. This potential for competition could be increased by changing the interswitching regulations. Two important potential downsides of deregulation (CNR's Crown corporation status, shippers' groups) are examined and it is concluded that

there are not significant problems. As a result, it is concluded that there should be much greater scope for competition in rail pricing. However, three outstanding studies (interswitching, Staggers, details of shipper survey) are needed before an implementation policy can be developed.

II. THE IMPORTANCE OF TRANSPORT COSTS

Canada is a "transport-sensitive" country because of its small population relative to enormous geographic size, and because of an unusually heavy dependence on international trade for its overall economic well-being. Recent research has shown that export-oriented industries are even more sensitive to transport costs than those whose output is destined for domestic markets. In fact, over half of the value of exports of the 137 goods-oriented industries at the four-digit SIC level, is produced in circumstances where transport accounts for 10 percent of sales or more. And this estimate understates the value of transport charges because it does not include very significant transport costs incurred by those goods producers engaged in private trucking.

Another dimension of the importance of transport costs to Canadian goods producers is revealed by comparing transport costs for inputs alone with certain other normal costs of production. For example, transport charges are larger than charges for electric power and other utilities in every goods-producing industry (classified by 2-digit SIC category) in Canada. In 19 of these same 26 industry categories, transport charges exceed retail and

wholesale margins combined. And in 25 of the 26 industrial groupings, transport charges are larger than advertising and promotion expenses. Indeed, in two important industrial categories - petroleum and coal, and agriculture - the relative contributions of transport charges to total costs are of the same orders of magnitude as wages, salaries and supplementary income. (And it may be recalled that all these comparisons include only the transport costs of moving inputs. They exclude the costs of transporting final outputs).

Thus, it is clear that transport charges contribute significantly to total production costs in Canadian goods-producing industries. And it is particularly noteworthy that exports display much higher ratios of delivery cost to delivered price (at the Canadian border) than do domestic sales.

Moreover, input-output analysis undertaken jointly by Statistics Canada and CCA researchers indicates that, whereas a 50 percent increase in transport charges would increase average final domestic prices by 3.7 percent, it would have a much greater effect on exports, increasing final export prices by 7 percent. Exports on average are even more sensitive to changes in transport charges than are

Table II-1

Operating Revenue by Transport Mode (mid-1970's)

Transport mode	Operating revenue ($000 000)	Percentage share
Railway (freight)	2 141.72	15.62
Air carriers (freight)	99.95	0.73
Water Transport	1 048.18	7.64
Pipeline	884.97	6.46
Trucking		
For-hire	3 299.60	24.07
Private	6 236.18	45.48
Total	13 710.60	100.00

Source: "Private Trucking: Analysis and Implications"
Klymchuk, CCA, 1983, Table 13, p. 49

goods produced and offered for sale domestically. Thus, exports on average are even more sensitive to changes in transport charges than are goods produced and offered for sale domestically. These observations are of particular interest because of the near-unique reliance of Canadians for economic well-being on their ability to compete on world markets. High transport costs dampen the price competitiveness of Canadian goods - both on export markets and at home in competition with imports on the domestic market.

It may be seen from the Table II-1, opposite, that rail is second only to trucking in the movement of freight in Canada. Even though rail appears to run a poor second to trucking, for certain categories of freight in certain parts of the country, railways account for almost all the movement of freight (as documented later in Part III on intermodal competition, relying on data for the period 1975-77).

III. INADEQUACY OF INTERMODAL COMPETITION AS A SAFETY NET FOR RAIL SHIPPERS AND THE POTENTIAL FOR INTRAMODAL COMPETITION

Part 3 of the National Transportation Act of 1967 sets out a fundamental premise of Canadian transport policy - namely that intermodal competition is to be the main force ensuring efficiency in the various modes. For example, the legislation states that ...

> "...an economic efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interests of the users of transportation and to maintain the economic well-being and growth of Canada, and that these objectives are most likely to be achieved when all modes of transport are able to compete under conditions ensuring that having due regard to national policy and to legal and constitutional requirements:" and that
>
> "regulation of all modes of transport will not be of such a nature as to restrict the ability of any mode of transport to compete freely with any other modes of transport;..." (emphasis added)

Those who hold the view that collective railway ratemaking in Canada is acceptable/desirable often cite the above emphasis on intermodal competition in the legislation - along with evidence of rail-truck rivalry - as supporting the rationale for continuation of the regulatory status quo.

The soundness of this argument rests undeniably on the pervasiveness of intermodal competition. This is investigated in the first part of the section in a review of Transport Canada data on traffic shares between truck and rail over the period 1975-77. The results of this general analysis are enough to refute the argument that trucking provides sufficient intermodal competition to rail to protect shippers against the dangers of collective ratemaking.

Although the analysis does not include competition from inland water transport, most observers would agree that this does little violence to a characterization of intermodal competition which relies only on rail and truck. Water is an important form of competition only for certain commodities in certain markets, e.g., grain moving east.

The second part of the section undermines the rationale of collective railway pricing from another angle. The results of the survey of rail users carried out for the Bureau of Competition Policy in the fall of 1983 with respect to the portion of freight reported as captive to rail are presented. They indicate that a much higher share than expected is potentially subject to intramodal competition.

First we turn to the extent of intermodal competition in Canada.

1. Analysis of Rail-Truck Tonnage and Revenue Shares

The Statistics Canada data comes from data tapes for 1975, 1976 and 1977 used by the Transportation and Communications Division of Statistics Canada to produce its publications #53-222 and #53-224, plus an edited and aggregated version of the data tapes used by the Canadian Transport Commission (CTC) to produce its publication entitled Waybill Analysis for the same years. This raw data was compiled on behalf of Transport Canada and published in 1979 under the title "Definition and Characteristics of the Trucking Market: A Statistical Analysis". The data is summarized in Tables III-1 and III-2 which show tonnage and revenue shares between rail and truck for various weight and distance categories.

It can be seen by reference to Table III-1 that, with respect to interprovincial shipments, in general, rail has the larger share for longer distances and heavier weight categories. Observation of the All Weights Column also reveals that in interprovincial movements, rail freight is of a lower dollar value than truck freight because the share of tonnage is consistently much higher than the corresponding share of revenue for rail, whereas the opposite is true for truck. To cap it all, rail accounts

TABLE III-1

MODAL SHARES OF TRUCK AND RAIL TRAFFIC 1975/1977 AVERAGES

INTER-PROVINCIAL MOVEMENTS ALL GOODS

SHIPMENT WEIGHT

	0.0 - 5.0 TONS			5.0 - 20.0 TONS			20.0 - 50.0 TONS			50.0+ TONS			ALL WEIGHTS		
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
0.0 - 150 MILES	RAIL	0.%	0.%	RAIL	3.%	5.%	RAIL	8.%	6.%	RAIL	66.%	63.%	RAIL	21.%	10.%
	TRK.	100.%	100.%	TRK.	97.%	95.%	TRK.	92.%	94.%	TRK.	34.%	37.%	TRK.	79.%	90.%
	TOT.	0.2	14.3	TOT.	0.7	7.7	TOT.	1.6	13.5	TOT.	0.8	4.0	TOT.	3.3	39.5
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
151 - 300 MILES	RAIL	0.%	0.%	RAIL	6.%	6.%	RAIL	12.%	11.%	RAIL	95.%	95.%	RAIL	48.%	27.%
	TRK.	100.%	100.%	TRK.	94.%	94.%	TRK.	88.%	89.%	TRK.	5.%	5.%	TRK.	52.%	73.%
	TOT.	0.2	14.7	TOT.	0.3	8.6	TOT.	1.2	15.4	TOT.	1.4	12.0	TOT.	3.2	50.6
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
301 - 500 MILES	RAIL	1.%	0.%	RAIL	47.%	31.%	RAIL	53.%	42.%	RAIL	98.%	99.%	RAIL	72.%	40.%
	TRK.	99.%	100.%	TRK.	53.%	69.%	TRK.	47.%	58.%	TRK.	2.%	1.%	TRK.	28.%	60.%
	TOT.	0.9	93.7	TOT.	3.0	85.1	TOT.	4.6	77.2	TOT.	8.2	74.5	TOT.	16.7	330.5
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
501 - 1000 MILES	RAIL	1.%	1.%	RAIL	55.%	43.%	RAIL	75.%	62.%	RAIL	100.%	100.%	RAIL	91.%	68.%
	TRK.	99.%	99.%	TRK.	45.%	57.%	TRK.	25.%	38.%	TRK.	0.%	0.%	TRK.	9.%	32.%
	TOT.	0.6	80.1	TOT.	2.6	93.7	TOT.	7.2	144.7	TOT.	28.9	266.1	TOT.	39.3	584.5
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
1000+ MILES	RAIL	1.%	1.%	RAIL	68.%	66.%	RAIL	87.%	84.%	RAIL	100.%	100.%	RAIL	90.%	73.%
	TRK.	99.%	99.%	TRK.	32.%	34.%	TRK.	13.%	16.%	TRK.	0.%	0.%	TRK.	10.%	27.%
	TOT.	0.6	137.2	TOT.	3.2	285.5	TOT.	8.3	376.4	TOT.	15.2	307.2	TOT.	27.4	1106.3
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
ALL DISTANCES	RAIL	1.%	1.%	RAIL	51.%	53.%	RAIL	67.%	70.%	RAIL	99.%	99.%	RAIL	83.%	64.%
	TRK.	99.%	99.%	TRK.	49.%	47.%	TRK.	33.%	30.%	TRK.	1.%	1.%	TRK.	17.%	36.%
	TOT.	2.5	340.0	TOT.	9.8	480.6	TOT.	22.9	627.2	TOT.	54.5	663.7	TOT.	89.8	2111.5

TABLE III-2

MODAL SHARES OF TRUCK AND RAIL TRAFFIC 1975/1977 AVERAGES

INTRA-PROVINCIAL MOVEMENTS ALL GOODS

SHIPMENT WEIGHT

	0.0 - 5.0 TONS			5.0 - 20.0 TONS			20.0 - 50.0 TONS			50.0+ TONS			ALL WEIGHTS		
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
0.0 - 150 MILES	RAIL	0.%	0.%	RAIL	2.%	3.%	RAIL	7.%	6.%	RAIL	85.%	81.%	RAIL	32.%	14.%
	TRK.	100.%	100.%	TRK.	98.%	97.%	TRK.	93.%	94.%	TRK.	15.%	19.%	TRK.	68.%	86.%
	TOT.	5.1	230.6	TOT.	15.3	153.7	TOT.	50.5	245.8	TOT.	35.9	105.5	TOT.	106.8	735.6
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
151 - 300 MILES	RAIL	0.%	0.%	RAIL	6.%	6.%	RAIL	21.%	19.%	RAIL	94.%	94.%	RAIL	49.%	27.%
	TRK.	100.%	100.%	TRK.	94.%	94.%	TRK.	79.%	81.%	TRK.	6.%	6.%	TRK.	51.%	73.%
	TOT.	2.4	149.0	TOT.	4.5	89.8	TOT.	14.0	136.3	TOT.	16.0	103.0	TOT.	37.0	478.0
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
301 - 500 MILES	RAIL	1.%	0.%	RAIL	53.%	42.%	RAIL	51.%	50.%	RAIL	98.%	98.%	RAIL	78.%	57.%
	TRK.	99.%	100.%	TRK.	47.%	58.%	TRK.	47.%	50.%	TRK.	2.%	2.%	TRK.	22.%	43.%
	TOT.	0.8	77.0	TOT.	2.9	70.3	TOT.	7.7	100.6	TOT.	16.7	145.8	TOT.	28.0	393.7
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
501 - 1000 MILES	RAIL	3.%	1.%	RAIL	69.%	61.%	RAIL	87.%	82.%	RAIL	100.%	100.%	RAIL	96.%	86.%
	TRK.	97.%	99.%	TRK.	31.%	39.%	TRK.	13.%	18.%	TRK.	0.%	0.%	TRK.	4.%	14.%
	TOT.	0.3	40.0	TOT.	2.2	71.8	TOT.	7.1	126.2	TOT.	40.9	389.8	TOT.	50.5	627.7
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
1000+ MILES	RAIL	31.%	32.%	RAIL	99.%	99.%	RAIL	99.%	100.%	RAIL	100.%	100.%	RAIL	100.%	99.%
	TRK.	69.%	68.%	TRK.	1.%	1.%	TRK.	1.%	0.%	TRK.	0.%	0.%	TRK.	0.%	1.%
	TOT.	0.0	4.1	TOT.	2.2	191.4	TOT.	7.3	319.4	TOT.	15.3	308.8	TOT.	29.9	823.8
		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.		TONS	REV.
ALL DISTANCES	RAIL	0.%	0.%	RAIL	21.%	47.%	RAIL	28.%	55.%	RAIL	95.%	97.%	RAIL	60.%	59.%
	TRK.	100.%	100.%	TRK.	79.%	53.%	TRK.	72.%	45.%	TRK.	5.%	3.%	TRK.	40.%	41.%
	TOT.	8.6	500.6	TOT.	27.2	577.0	TOT.	86.7	928.4	TOT.	124.8	1052.9	TOT.	247.2	3058.8

Data Source: Definition and Characteristics of the Trucking Market: A Statistical Analysis Transport Canada, 1979

N.B. Tons are measured in millions Revenue is in million of Dollars

for 83 per cent of the tonnage and 64 per cent of the revenue for all weights and all distances. Therefore, there seems to be relatively little scope for competition with truck in interprovincial freight movements because rail's share is high overall and because rail is chosen for lower value, longer distance shipments.

Now what about intraprovincial shipments? For these markets total tonnage is almost three times as great as for interprovincial movements. However, the relative truck-rail shares would at first glance indicate good scope for competition between truck and rail. As Table III-2, opposite, shows rail and truck shipments split 60/40 respectively in terms of both tonnage and revenue.

A closer analysis of the data reveals that the 60/40 aggregate split is an averaging of dominance of both rail and truck at the polar extremes. Observations of Table III-2 opposite shows that truck is dominant for shorter distances and lower weight categories, while rail tends to have the very high shares for larger distances and heavier weight categories.

In order to explore the commodities and markets where neither rail or truck is dominant (hence where there is an opportunity for intermodal competition) Tables III-3

Table III-3

Tonnages (0,000) For Various Geographic Areas and Product Groupings Where Neither Truck or Rail Accounts for 85 Per Cent of Shipments

Geographic Areas / Product Groupings	INTRA-MARITIMES		INTRA-QUEBEC		INTRA-Ontario		INTRA-MANITOBA & SASK.		INTRA-ALBERTA		INTRA-B.C.		INTER PROVINCIAL		TOTAL AREAS	
	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%
LIVE ANIMALS	0.1	1	0	0	0	0	0.4	2	0	0	0	0	17.5	62	18.0	11
FOODS	47.4	34	84.9	30	15.4	2	24.5	10	17.7	12	6.8	5	263.3	8	433.0	9
CRUDE MATERIALS	269.2	33	371.7	44	108.9	3	133.9	23	126.1	35	562.3	33	184.6	11	1756.7	18
FABR. MATERIALS	144.6	24	254.8	20	258	12	58.1	14	57.3	8	88.6	8	894.5	32	1755.9	21
END PRODUCTS	10.2	18	14.5	10	38.3	9	15.7	27	0.5	0	0.2	0	367.6	63	447.0	29
MISC. GOODS	0.4	1	49.8	33	22.8	6	6.4	29	18.5	63	3.4	63	97.2	12	198.5	14
TOTAL GOODS	471.9	29	775.7	29	443.4	6	239	18	220.1	16	661.3	25	1797.7	20	4609.0	14

Data Source: Definition and Characteristics of the Trucking Market: A Statistical Analysis - Transport Canada, 1979.

N.B. The percentage figure to the right of each tonnage number expresses that tonnage in proportion to total tonnage in each cell.

Table III-4

Revenue ($000,000) For Various Geographic Areas and Product Groupings Where Neither Truck or Rail Accounts for 85 Per Cent of Shipments

Geographic Areas / Product Groupings	INTRA-MARITIMES		INTRA-QUEBEC		INTRA-Ontario		INTRA-MANITOBA & SASK.		INTRA-ALBERTA		INTRA-B.C.		INTER PROVINCIAL		TOTAL AREAS	
	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%	Tons	%
LIVE ANIMALS	0.1	4	0	0	0	0	0.1	1	0	0	0	0	15.0	80	15.2	38
FOODS	10.3	37	2.6	6	3.2	3	7.1	28	2.1	14	0.1	0	217.6	57	243.0	38
CRUDE MATERIALS	12.8	52	21.1	37	12.6	11	7.8	24	5.7	29	23.3	19	31.4	14	114.7	19
FABR. MATERIALS	4.4	9	19.1	13	17.8	8	5.0	11	2.6	4	6.5	9	266.9	37	322.3	25
END PRODUCTS	4.3	20	1.8	3	7.2	5	5.3	24	0	0	0.1	0	224	46	42.7	30
MISC. GOODS	0.1	2	7.2	20	3.6	5	1.5	30	3.0	38	0.7	5	47.8	17	63.9	15
TOTAL GOODS	32.0	24	51.8	15	44.4	7	26.8	20	13.4	9	30.7	11	802.7	38	1001.8	15

Data Source: Definition and Characteristics of the Trucking Market: A Statistical Analysis - Transport Canada, 1979.

N.B. The percentage figures to the right of each revenue number expresses that revenue in proportion to total revenue generated in each cell.

and Table III-4 have been extrapolated from the Transport Canada study. These tables show the tonnages and revenues for all geographic areas and product groupings where neither rail or truck accounted for 85 per cent or more of total shipments. The tonnage and revenue figures are also shown as a percentage of total shipments for each geographic area and product grouping. Shipments are expressed in terms of tons in Table III-3 and in terms of revenue in Table III-4. The tables also include a column for interprovincial shipments.

Analysis of these tables reveals a substantial variation of the percentage figures. That is, the share of tons and revenues where neither rail or truck accounts for 85 per cent of shipments varies among the different geographic area and product grouping cells. Although specific cells show significant shares of freight (for example, 63 per cent of tons for intra British Columbia and intra Alberta miscellaneous goods) it is clear that these cells represent the exception and for the most part the shares are seldom higher than one quarter of the traffic.

The best summary of this is provided by the aggregate figures for total areas and total goods. This reveals the important finding that the markets where neither

rail or truck account for 85 per cent of shipments represent only 14 per cent of the tonnage and 15 per cent of the revenue generated from total truck and rail freight in Canada over the period covered by these statistics.

In other words, there is little scope for rail-truck competition, because of the relatively small share of the market where neither rail or truck is dominant and, presumably, intermodal competition could take place. In these circumstances, where the incidence of such competition is slight, the appropriateness of legislation permitting collective price-setting by railways is brought into question.

Caveat

The approach used here to examine rail-truck competition has certain shortcomings. For example, the analysis is conducted at a high level of commodity aggregation which may conceal many additional submarkets where intermodal competition is thin or non-existent. Provinces have been grouped, which further accentuates the effect just described.

It should also be recalled that sister companies to the railroads have a substantial investment in the trucking industry. The combined trucking operations of CN and CP in 1976 (prior to a number of later acquisitions) amounted to only 14 per cent of total Canadian trucking revenue. However this figure understates the dominance of CN and CP in trucking due to the fact that in certain markets there exists a dependence of trucking on the rail infrastructure. This is exemplified in the sporadic shipping market, which includes the shipping of less-than-truckload (LTL) shipments defined as all shipments weighing up to 10,000 lbs. and having neither the high frequency nor a destination on high-density routes that would receive preferential tariff treatment. In order to supply efficient LTL service, carriers require transport complements such as flat-car facilities for piggy-back services, interlining services and terminal facilities at freight interchanges. However, the rail companies have a near monopoly in supplying these complementary services.

Finally, the market share data on which the analysis rests are silent on the matter of the quality of competition. A more comprehensive analysis of these data could generate additional qualifications - but would be

unlikely to remove the emphasis placed here on the uneveness of rail-truck competition across commodity categories and across Canada.

2. Survey Findings on Freight Captivity

In "Competition and Collective Pricing Between Railways in Canada" (p. 57), Prof. Heaver presented unpublished data from the railways to show that competitive rail traffic recently accounted for only 19 per cent of total domestic rail traffic. If true, and interpreted correctly, this would serve to dampen enthusiasm for the advantage of competition between the CNR and CP Rail because of the limited scope it would portend for intramodal competition. Reliability of this estimate however is challenged by data reported in the survey of rail users' carried out for the Bureau of Competition Policy (the survey is described in greater detail in the next section), where the proportion of total freight captive to the rail mode is estimated at 43 per cent. With 32 per cent of the freight captive to rail being totally captive to the CNR, and 23 per cent of the total captive to CP Rail, it follows that 45 per cent of the total freight captive to the rail mode is subject to intramodal competiton, not in the order of 19 per cent as suggested by Prof. Heaver. (If 55 percent of freight is captive in either the CNR or CP Rail, the remainder, 45 percent, must be subject to intramodal competition.) This estimate of 45 per cent likely understates the scope for

rail-rail competition (a) because of the propensity for shippers to exaggerate the extent to which they are captive to carriers, and (b) because shippers may tend to overlook the use of trucking to feed competitive rail freight services when they are discussing the extent to which they are relying on a single railroad.

IV. Shippers' Views: Consensus for More Competition

As a contribution to this review of collective rate making among rail freight carriers, the Bureau of Competition Policy of Consumer and Corporate Affairs Canada funded a survey of railway users views. This independent survey was conducted by E.M. Ludwick and Associates (EMLA) of Winnipeg, Manitoba. The objective of the survey was to solicit the opinions and perceptions of all significant types of railway users, including large and small goods oriented firms, truckers, freight forwarders and shipping lines.

Rail users' names and addresses were obtained from the CNR and CP Rail's 1983 customer listings. Thanks to the full cooperation of these two major railroads it was possible to select a comprehensive random sample of 412 companies. EMLA approached the most senior person who was responsible for transportation. They were sent precise written questionnaires, and then a short time later they were telephoned to record their complete responses. Roughly 282 replies were received thus constituting a 70 percent response rate.

It is important to note that the target population represents exclusively present day railway users; the survey does not reflect the views of past or potential users.

In attempting to obtain the representation of a complete railway user typology, EMLA was successful in segmenting the 282 respondents according to whether they were:

- shippers, receivers or intermodal interliners
- large or small users
- transborder or domestic users
- located in one or more of Canada's five economic regions.

The overall significance of the respondents as a group is reflected in that they account for $122 billion in gross revenues, $5.4 billion in total transport charges, and $3.3 billion in rail freight expenses alone. The latter amount represents 70% of the total Canadian rail freight bill*. Their rail traffic is split more or less evenly between domestic (55 percent) and transborder (45 percent) business, in contrast to total freight (rail plus truck)

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* Based on Statistics Canada Cat. # 52-208 1981.

where domestic traffic (62 percent) is substantially larger than the movement of freight across the Canada-U.S. border (38 percent).

The survey results in their entirety will be released to interested parties as soon as EMLA's report is completed, however this chapter of the submission concentrates on the opinions of the respondents to question 14 of the survey. This question explored the rail user's preferences for 9 explicit policy options for different degrees of competition and joint rate making.

Before turning to the presentation of these results, brief mention should be made of reaction to recent changes in the United States. Preliminary analysis of survey responses clearly indicates that U.S. rail deregulation in the wake of the Staggers Act has benefitted Canadian shippers and consignees. The primary effect observed by Canadian shippers is an improvement in rates. And they also attest to experiencing a heightened responsiveness to their shipping needs from the railways in the United States. Replying to a related question, the majority of shippers surveyed indicate that they would welcome railway competition in Canada in the expectation of better service and lower rates - in that order.

Among the many questions answered in the survey, the distribution of responses regarding nine policy options for railway pricing were most revealing. The principal finding here is a consensus among users to limit the scope of collective railway pricing.

The rail users were asked to vote on a scale of 1 to 5 (1 = least desirable and 5 = most desirable) on nine options*.

Some of the options have similarities one to another. For example, Options 1, 2 and 3 are the most conservative insofar as they call for the least change from the present policy with respect to collective railway pricing. Option 1 is no change from the present policy. The only change provided for in Option 2 is that section 32(2) of the Transport Act should be made permissive rather than compulsory. (At present section 32(2) requires the concurrence or participation of competing carriers in an agreed change between a carrier and a shipper). Option 3 allows for collective rate-making except for express services and local commodity single line rates.

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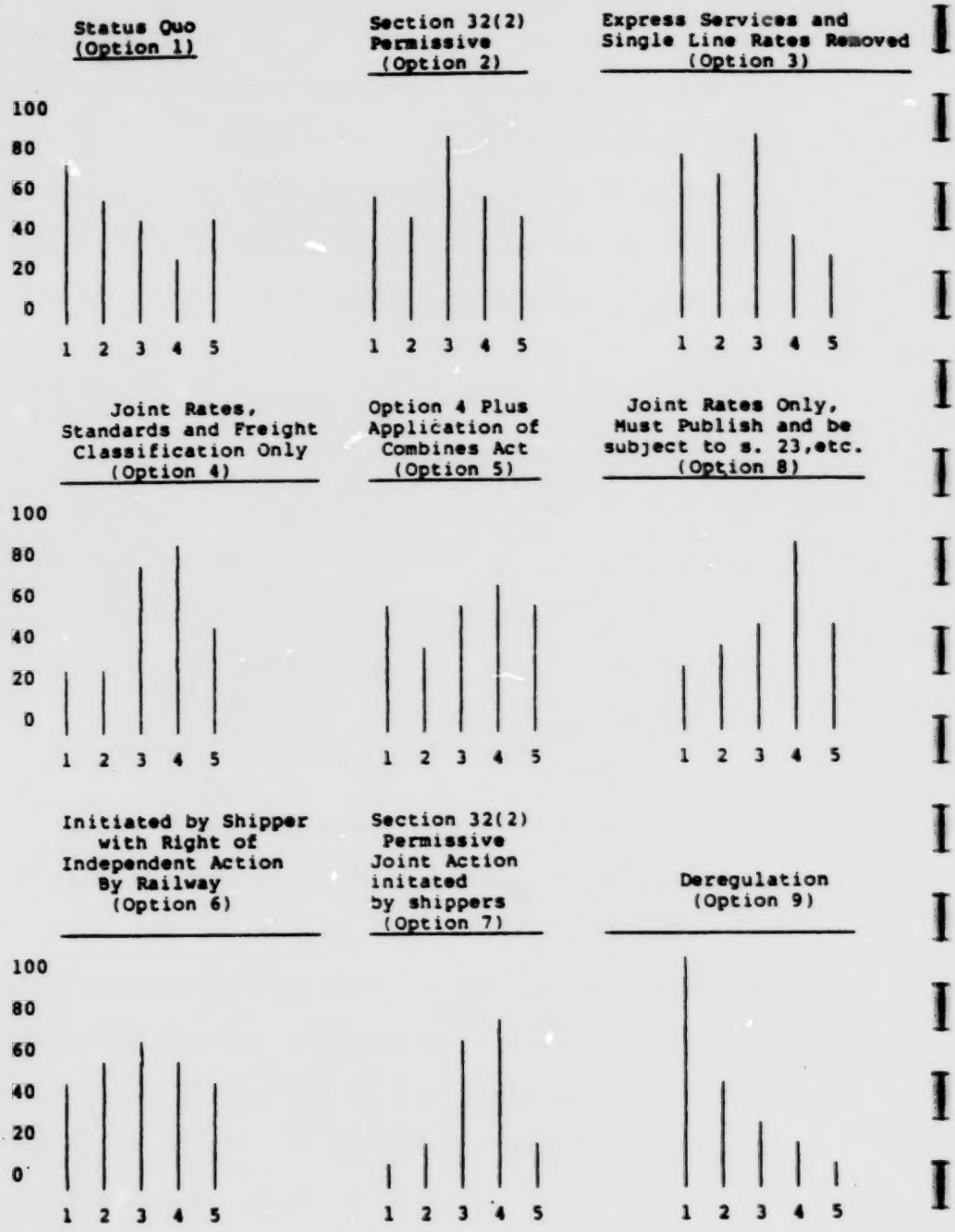
* The options are reproduced in Appendix A.

Options 4, 5 and 8 would substantially limit collective railway pricing and are similar in content. Option 4 provides for collective action only on joint rates and for service standards and freight classification, subject to CTC review and/or public inquiry. Option 5 is the same except for the additional condition that the Combines Investigation Act will apply where the permitted collective action acts as a barrier to competition. Option 8 would limit collective rate making to joint rates by statutory amendment, rather than promulgating new regulations, but at the same time continuing rate publication, access to the section 23 (National Transportation Act) appeal process and general accountability to the CTC.

Options 6 and 7 are characterized by the common principle that consultation among the railways is permitted only when initiated at the request of shippers. Option 6 provides for railway collective arrangements only where explicitly requested by shipper groups, while allowing the right of independent action for any railway. These changes would be accomplished through amendment of Section 279 and Subsection 32(2). Option 7 calls for subsection 32(2) to be

Chart IV-1

Distribution of Answers According to the Scale of Preference
(1 = Least Desirable; 5 = Most Desirable)


Status Quo (Option 1)
Section 32(2) Permissive (Option 2)
Express Services and Single Line Rates Removed (Option 3)
Joint Rates, Standards and Freight Classification Only (Option 4)
Option 4 Plus Application of Combines Act (Option 5)
Joint Rates Only, Must Publish and be subject to s. 23,etc. (Option 8)
Initiated by Shipper with Right of Independent Action By Railway (Option 6)
Section 32(2) Permissive Joint Action initated by shippers (Option 7)
Deregulation (Option 9)
100
80
60
40
20
0
1 2 3 4 5

Source: ELMA

permissive and railway consultations to be initiated by shippers, except for special arrangement tariffs and agreed charges.

Finally Option 9 provides for the most radical change from the existing policy, legislative amendments to fully deregulate ratemaking by the railways.

The results summarized in Table IV-I and graphically depicted in Chart IV-I opposite support two clear findings:

1. For rail users, the least popular policies are the polar extremes represented by Options 1 and 9, that is, the status quo and fully deregulated railway ratemaking.

2. There is a consensus in favour of limiting substantially the railways' freedom to price collectively. Strongest support is in favour of Options 4, 5, and 8 which limit collective action to joint rates. Next strongest support is for a right to collective ratemaking when shippers request it, that is, Options 6 and 7.

Table IV-1

Relative Preference of Policy Options: All Survey Respondents

(Scale of Preferences 1 = least desirable; 5 = most desirable)

		Option 1	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7	Option 8	Opti 9
Number of Respondents answering: (Percentages in Parentheses)	1	83 (29.9)	58 (20.7)	63 (22.5)	34 (12.2)	50 (17.9)	42 (15.1)	27 (9.7)	33 (11.9)	147 (5
	2	66 (23.8)	50 (17.9)	55 (19.6)	35 (12.5)	39 (13.9)	46 (16.5)	54 (19.4)	39 (14.0)	55 (1
	3	50 (18.1)	81 (28.9)	87 (31.1)	79 (28.3)	50 (17.9)	77 (27.7)	79 (28.4)	58 (20.9)	34 (1
	4	31 (11.2)	55 (19.6)	41 (14.6)	83 (29.7)	74 (26.5)	70 (25.2)	86 (30.9)	94 (33.8)	23 (
	5	47 (17.0)	36 (12.6)	34 (12.1)	48 (17.2)	66 (23.6)	43 (15.5)	32 (11.5)	54 (19.4)	20 (
Total		277	280	280	279	279	278	278	278	279
Mean Response		2.6	2.9	2.7	3.3	3.2	3.1	3.2	3.3	2.2
Median Response		2	3	3	3	4	3	3	4	1
Number of Respondents answering:	4 or 5	78 (28.2)	91 (32.2)	75 (26.7)	131 (46.9)	140 (50.1)	113 (40.7)	118 (42.4)	148 (53.2)	43 (1
	3	50 (18.1)	81 (28.9)	87 (31.1)	79 (28.3)	50 (17.9)	77 (27.7)	79 (28.4)	58 (20.9)	34 (1
	1 or 2	149 (53.7)	108 (38.6)	118 (42.1)	69 (24.7)	89 (31.8)	88 (31.6)	81 (29.1)	72 (25.9)	202 (7

Source: ELMA

Options:
1 - Status Quo
2 - Section 32(2) Permissive
3 - Express Services and Single Line Rates Removed
4 - Joint rates, Standards and Freight Classification Only
5 - Option 4 - Plus Application of Combines Act
6 - Initiated by Shipper with Right of Independent Action by Railway
7 - Section 32(2) Permissive, Joint Action Initiated by Shipper
8 - Joint Rates Only, Must Publish and be Subject to s. 23, etc.
9 - Deregulation

Options 9 and 1 received the highest number of "votes" at the "least desirable" end of the scale. 202 out of 279 respondents answered either "1" or "2" for Option 9; there were 149 out of 277 who responded in a similar fashion with respect to Option 1.

Options 8 and 5 were the only policy alternatives where more than half of the respondents registered a "4" or "5" vote representing the "most desirable" end of the scale. Option 8 received 148 "4" or "5" answers, while Option 5 received 140. Option 4 was not far behind with 131 votes.

The ranking of the 9 policy alternatives in terms of the number of respondents who answered "4" or "5" for each option is summarized in the "All Respondents" column of Table IV-2 below.

TABLE IV-2

Ranking of Options According to the Number of Respondents Answering "4" or "5"

	All Respondents		Respondents Answering "4" or "5" to Options 1, 2, 3		Respondents Answering "4" or "5" to Options 6 & 7	
Rank	Option Number	Number of "4" or "5" Answers	Option Number	Number of "4" or "5" Answers	Option Number	Number of "4" or "5" Answers
1	8	148	8	99	8	159
2	5	140	5	95	5	146
3	4	131	4	90	4	143
4	7	118	7	82	2	68
5	6	113	6	66	3	46
6	2	91	9	23	9	42
7	1	78			1	34
8	3	75				
9	9	43				

The preference of the rail users surveyed for the various alternatives set out in question 14 of the survey is also revealed by examining a measure of respondents' second choice. Table IV-2 presents this information by showing the ranking for the options for two subsets of the respondents: those who answered "4" or"5" for Options 1, 2 and 3 and those who answered "4" or "5" for Options 6 and 7. It reveals second choice insofar as it shows how the

respondents who had voted strongly in favour of limited change, and shipper initiated collective railway pricing, voted with respect to the other options. Table IV-2 shows that the rank order of their second preference is the same as the first preference of other shippers. Options 8, 5, and 4 which represent significant limitations on collective pricing are the most preferred second choice, with Options 7 and 6, shipper initiated collective action, next in preference.

Another snapshot of the survey information on the relative preference of policy options is provided in Table IV-3 below.

Table IV-3

Ranking of Options According to the Number of Respondents Answering "4" or "5" relative to "1" or "2"

RANK	OPTIONS	Ratios "4"-"5"/"1"-"2"
1	8	2.05
2	4	1.89
3	5	1.57
4	7	1.46
5	6	1.28
6	2	0.84
7	3	0.64
8	1	0.52
9	9	0.21

Source: EMLA

This table takes into account the extent to which votes in favour of a particular option are offset by votes against it. The resulting ratios cause a ranking which is substantially similar although not identical to that found in Table IV-2. Once again, the highest rated options in the survey are those favouring substantial change from the present regime.

Further analysis remains to be carried out on the survey results with respect to the characteristics of the rail user population linked to particular policy options. This information will be available in the EMLA final report. However, based on the analysis carried out in this chapter, the message seems clear, there is a consensus among rail users surveyed for a significant limitation on the ability of the railways to set prices collectively. In the rail user's view, collective ratemaking should be allowed only on through interline (or joint) rates.

V. THE CROWN CORPORATION ISSUE

Government ownership surfaces occasionally as an issue that influences opinions on what to do about collective rate-setting in Canadian railways. As indicated in the following table, there is no question that the growth of government ownership over the past two decades (in particular, that of provincial Crown corporations) has heightened public awareness of public enterprise in transport as well as other sectors of the economy.

	Total Assets	Total Liabilities	Net Worth
	(billion dollars)		
1967			
Federal Enterprises	12.3	9.4	2.8
Provincial Enterprises	14.0	11.2	2.8
1980			
Federal Enterprises	47.0	37.3	9.6
Provincial Enterprises	80.1	68.2	11.9

Sources: Federal Government Enterprise Finance, 1980, Statistics Canada, 61-203 and Provincial Government Enterprise Finance, 1980, 61-204

Parenthetically, it may be noted that the public does not seem aware of the faster growth and larger size of provincial Crown corporations (relative to their federal counterparts). However, it is not the size or growth of public enterprise that worries Canadians so much as concerns

over accountability. And the specific allegation relating to withdrawal of section 279 is that it would place CP Rail in an untenable position if the competitive wraps were removed from its larger, government-owned counterpart. The perceived threat is that the relationship between the CNR and Ottawa could be used unfairly to bring CP Rail to its knees. Those who accept this argument suggest that such an outcome would be facilitated by predatory pricing, capital restructuring, letters of comfort and generally more advantageous access to capital.

Several considerations can be raised to allay much of the alarm that arises from government ownership of the CNR. These relate to the facts that: (1) CP Rail has a sizable market protected from the CNR, (2) CP Rail has an immense corporate family of its own to draw upon, (3) it would not make economic or political sense for the government to allow its resources to be used so counterproductively, (4) private corporations operate in other industries where their success depends on competing with Crown corporations, (5) because section 279 is permissive, the alleged threat that would accompany removal could in fact occur today - without its removal and (6) proposals for reform of Crown corporation accountability currently are being prepared by the Treasury Board. It may be helpful to expand briefly on each of these points.

(1) The Size of CP Rails's Protected Market

The reality of the rail freight industry in Canada is that each major railway serves a number of customers which are captive. Therefore, the financial resources of the CNR are irrelevent for at least that portion of CP Rail's traffic which has no alternative. While we have no data on that share of CP Rail's traffic or revenue that is captive, we do know, from the EMLA survey, that about 10 percent of respondents' total freight is captive to CP Rail. This is not an insignificant amount, reflecting about $330 million in rail freight for only the rail users' surveyed.

(2) Deep Pocket Overkill

An important element of the "deep pocket" rationale in support of retaining section 279 of the Railway Act is that the CNR, because of its relationship to the federal government has access to unlimited funds at lower cost. For this reason, it is argued that it would be unfair to the CP Rail to remove the competitive wraps fron CN. This argument does not withstand the broadest examination. It parallels the argument for expanding stockpiles in the nuclear debate. Surely, any firm with the size and reach of

CP Rail cannot feel seriously threatened by the prospect of a rival using easy access to funds to sustain predatory pricing or other anti-competitive practices. Even a simplistic look at CP Rail and the immense dimensions of the Canadian Pacific corporate family makes this point rather dramatically.

In 1982, revenues of the CP empire totalled $12.3 billion, accumulated from 160 major corporate elements with minority interests in another 112 firms. Sales of this enormous transportation and resources conglomerate are roughly equivalent in magnitude to the GNP of New Zealand, and are large enough to buy the combined assets of Canadian General Motors Canada, Imperial Oil and Simpson Sears. In terms of assets, CP ranks <u>first</u> among private enterprises in Canada with $17.3 billion in 1982. Ranked in Fortune's list of top 500 U.S. corporations, CP was 30th in 1982 and among the largest non-U.S. firms, CP ranked 36th. CP Rail itself has revenue of more than $2 billion. Two Canadian Pacific subsidiaries alone, Cominco and AMCA International, have more subsidiaries that the 56 owned by the CNR.

Canadian Pacific is a multinational conglomerate. Its shares are listed on the New York, Amsterdam and London stock exchanges, as well as those in Canada. It has

production facilities in more than a dozen countries. AMCA, CP's consulting and engineering arm, exports to more than one hundred different countries.

Only 17 percent of CP's revenue comes from CP Rail. In comparison, CSX Corporation, the largest diversified railway in the U.S., derives 85 percent of its revenue from rail.

With the initial 25 million acres granted by government, it was easy for CP to diversify, beginning with the mineral, oil and gas, and forest wealth of its enormous land grant.

It is true that unless a conglomerate owns 100 percent of a subsidiary, it cannot shift cash flow from that affiliate to the parent. It can nevertheless simply use its controlling interests to extract dividends from subsidiaries, in lieu of confiscated cash flow. And in the case of Canadian Pacific, wholly-owned subsidiaries include CP Air, CP Ships, Can Pac, Canadian International Paper, Canadian Pacific Hotels, Canadian Pacific Securities, Chateau Insurance, Maple Leaf Mills, Smith Transport, Marathon Realty, Minneapolis, North-field and Southern Railway, and the list goes on and on.

These megacorp characteristics and the myriad of linkages to other industries and other countries provide CP Rail with substantial competitive advantages over CNR and place in proper perspective the expressed concern that it would be unfair to unleash a new, undefined competitive potential of the CNR.

(3) Use of Federal Resources

Those who fear federal endorsement of CN's unfair use of its resources to weaken CP Rail seem to forget that that same firm constitutes a cornerstone of Canada's largest private corporation. Why would Ottawa sanction CNR conduct that violated the Combines Investigation Act?* Why would it authorize the use of taxpayers' funds to bankroll activities whose effects would be to endanger the economic well-being of the corporate cornerstone of the nation's largest taxpayer? Why would it imperil the financial nestegg hopes of hundreds of thousands of Canadians, tied to Canadian Pacific through shareholding, pensions and/or insurance? None of the answers that would support the alleged worry make good economics or good politics.

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* The Supreme Court of Canada decision in R.v. Eldorado Nuclear Limited et al. makes clear that Crown immunity from the Combines Act applies only to agents of the Crown. The CNR is not an agent of the Crown.

(4) Cohabiting With Crowns

Federal Crown corporations are involved in almost every aspect of Canadian life including transportation (Air Canada, National Harbours Board, St. Lawrence Seaway Authority), industry (CIDC, Petro Canada), and culture (CBC, Canada Council). In total, Crowns (federal and provincial) account for more than one-third of all Canadian - controlled corporate assets. The question of whether private enterprise can survive in direct unfettered competition with public sector counterparts elicits a longstanding positive empirical response in this country.

(5) Section 279 is Permissive

Whatever future threat is envisaged from unleashing the competitive potential of the CNR in fact exists right now because section 279 does not require CN and CP to act collectively, it merely allows the carriers to do so. Why then would CN (with government approval) be more likely to predate or engage in other activities that would injure competition unduly after 279 was withdrawn than it has been over the past fifteen years - or is now?

(6) Reform Underway

There has been nothing said in the course of challenging this "Crown corporation argument" that would deny the desirability of improving the performance of federal public enterprises. An important step in this direction was announced recently. Treasury Board proposals for reform of Crown corporation accountability are scheduled for presentation early in 1984. These legislative revisions can only serve to reduce the importance of the Crown corporation issue as it arises in the context of collective rate-making for rail freight.

VI. BUYING GROUPS

Retention of collective rate-making in rail freight, it has been suggested, is essential to ensure that shippers be allowed to continue a common practice that has become a structural landmark on the demand side - i.e. the propensity of shippers to form buying groups in negotiating for the purchase of rail freight services.

The first point to note is that collective action by shippers did not precede, but rather came about after, if not as a consequence of, the absence of rate competition among carriers. As Professors Heaver and Nelson state:

> "The most noticeable development in the organization of shippers for negotiations has been the increasing role of formal or informal Committees over the last fifteen years."*

The historical sequence of events have been such that because of original over-capacity in privately owned, but publicly subsidized railway networks, the fear of destructive competition brought about legislation requiring collusion on the carrier side of railway markets (section 32(2) preceded section 279).

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* T.D. Heaver and J.I. Nelson; "Railway Pricing under Commerical Freedom: The Canadian Experience". C.T.S., U.B.C., 1977 p. 74 (emphasis added)

Such one sided inducement to collective action is best exemplified by the original Part V provision of the Transport Act which, as early as 1938, compelled potentially competitive railways to agree among each other before an agreed charge with any one or more shippers would be approved by the Board of Transport Commissioners. This requirement was never extended to shippers. Today, subsection 32 (9) of the present Transport Act stipulates that where an agreement for an agreed charge has been made between a carrier and a shipper, any other shipper may with the consent of the carrier become a party to the agreement. Notwithstanding subsection 32(10) which provides individual shippers with some regulatory protection from carrier discrimination, it remains clear that transport law on agreed charges and other rates has been and remains expressly slanted in favor of carrier rather than shipper collective action, and has never granted shippers anti-combines immunity whatsoever in Canada.

The Combines Investigation Act is a general law of general application which, inter alia, pursuant to section 32 outlaws agreements or arrangements that lessen competition unduly. The Act applies to all commerce in Canada, except those areas exempted by other Acts of Parliament or the provincial legislatures.

While section 279 of the Railway Act and section 32(2) of the Transport Act provide an immunity from the application of the Combines Act for collusion by the railways, there is no such immunity for purchasers of rail services.

Whether or not collective action by shippers through the formation of buyers' groups raises a question under section 32 of the Combines Act depends on the facts of each particular case. The key test is whether the agreement or arrangement lessens competition unduly. The judicial interpretation of "undueness" has both a qualitative and quantitative aspect. If the purchasers of rail freight services take a significant share of the supply of services offered in an identifiable market, a restrictive arrangement among the purchasers would give reason to believe that an offence is being committed. Alternatively, if the market share controlled by the members of the group is less substantial but there are additional factors, such as, anti-competitive behaviour directed by the group at other purchasers or potential purchasers to foreclose them from

doing business on an equal basis with the railways, then this would also likely constitute an offence under the Act.* To date, no evidence has been brought to our attention that the behaviour of the rail freight buying groups raises a question under the Combines Act. Such a possibility seems remote because of the diverse and competing shipper interests in any one freight market. The important point is that such consideration is not dependent on whether or not carrier immunity is removed or retained, but on whether the test of "undueness" is likely to be met.

Finally, preliminary indications are that rail freight buyers' groups are not a significant phenomenon in Canada. According to the representative cross-section of almost 300 firms to whom the EMLA survey was addressed, less than 10 percent belong to any kind of buying group.

In summary, the fact that Canadian law makers have not seen fit to expressly grant an anti-combines immunity to buying groups, together with the indication that they are not at all pervasive in the rail freight business, leads one to question the relevance of raising this issue in support of maintaining the status quo in collective railway pricing.

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* A more elaborate explanation of the application of the Combines Act to purchasers is contained in a speech by the Director of Investigation and Research, a portion of which is attached in Appendix B.

VII. STAGGERS ACT

In this section, which attempts to examine the Staggers Act and its implications for the movement of rail freight in Canada, that there are several important gaps in the information presented. This is ready testament to the need for the in-depth analysis of this issue currently reaching completion at the Canadian Transport Commission.

The Staggers Act, implemented in October, 1980 did not deregulate U.S. railways completely, but it did remove most rail rates from ICC jurisdiction. Regulation remains only in those situations where rail is deemed to have "market dominance" over specific traffic. Even in those instances, the Act allows railways to increase rates - in line with costs - without any protracted regulatory review. With its power to exempt traffic from regulation, the ICC has completely deregulated piggy back traffic, export coal and boxcar traffic. The Act also permits railways and shippers to enter rate and service contracts, which the ICC cannot modify or abrogate. It is this latter feature of U.S. rail deregulation that has attracted particular attention in Canada. Since late 1980, U.S. railways have entered into more than 8000 rate and service contracts with shippers. These contracts, which cover all commodities

handled by rail, create problems for Canadian carriers because Canadian regulations specifically prevent them from entering into secret arrangements with shippers, thus leaving the CNR and CP Rail at a competitive disadvantage in relation to their U.S. counterparts.

On balance, it appears that U.S. railways are satisfied with the Staggers legislation, the way it has been implemented, and the new rate flexibility that it allows them. The strong consensus among American railways is that deregulation has allowed them to adjust to the recent recession notwithstanding its intensity with less difficulty, less delay and less financial damage than was the case in previous recessions.

Opponents of transport deregulation almost always warn against it partly because of the abuses to small and captive shippers they expect it to entail. Railways in the U.S. were always free to initiate rate and services proposals, but prior to Staggers, several sections of the Interstate Commerce Act provided shippers with protection against discrimination and undue preference. In addition, railways operating in the U.S. before Staggers typically implemented rate changes only after proposing them before regional rate bureaux. These discussions often resulted in

major modifications to proposals. Passage of the Staggers Act effectively removed both the protection of shippers by the ICC and rate bureau discussions for a large volume of rail traffic. Single-line rates may not be discussed by rate bureaux. Rates equal to or greater than variable cost - but less than the threshold levels used to establish market dominance - are no longer subject to review by any federal regulatory agency. Thus, there is substantial leeway for railway rate and service initiatives to modify traffic patterns. The Staggers Act specifies a threshold level of rates in relation to variable costs below which the ICC has no jurisdiction.

Although "capacity" apparently has not yet emerged as a concrete problem for shippers in the wake of Staggers, many shippers are apprehensive about the mid-term future, when excess capacity is likely to disappear and rate increases become the rule.

It is difficult to assess the differential impact of Staggers by size of shipper because of the declining economy, substantial excess capacity and heightened intermodal competition (following passage of the Motor Carrier Act of 1980 that deregulated single-line trucking). However, in the view of the Department of Commerce, at least

up to the fall of 1982, the rate and service innovations being introduced during the first two years of Staggers were neutral with respect to firm size.

Several aspects of the Staggers Act have contributed to shorter time lags in rail rate changes. For example, the ICC publishes quarterly a railroad cost index and the law permits rate adjustments based on changes in the index. In addition, because rate bureaux can no longer deal with single-line rates, such changes are no longer contained in rate bureau dockets with the result that there is a greater potential for more frequent rate changes in both directions. Some segments of the industry see this as a shift from rate stability to uncertainty. For industries that practice once-a-year product pricing (as in fertilizers), the quarterly rate changes that have become customary under Staggers are considered disruptive.

Some fear of discrimination has emerged as a result of contract secrecy. Most contracting shippers do not favour disclosure however. Railways tend to favour the confidentiality of contracts because it removes the pressure of offering the same terms to other shippers.

In summary, the key elements of Staggers are the reduced freedom to price collectively, the phasing out of rate bureau involvement in pricing and unpublished contract rates. Collective ratemaking is allowed only for joint rates and the possibility of joint negotiation is open only to those carriers participating in the particular freight movement.

As a result, three types of changes have emerged following passage of the Staggers Act. These are: major changes in the structure of rates; increases in the frequency of rate changes; and changes in interline switching and the routing of shipments (in cases where joint rates have become non competitive with single-line rates). The longer-term concern over this latter development is that cancellations of joint routes may reduce shipper access to competing railways and eventually leave shippers with access to only one carrier. Prior to Staggers, the interlining of freight by railroads was mandatory.

More skepical observers note that because there has not yet been an opportunity to witness rail deregulation through all phases of a complete cycle of transportation activity, it is still too early to assess the net outcome of Staggers.

At this juncture, it may be recalled from Section IV of this submission, reporting on the results of a recent survey of rail shippers' opinion, that the consensus of Canadian rail users is that they have benefitted from rail competition in the U.S. and would welcome the introduction of more rail competition in Canada.

VIII. ISSUES AND ALTRUISM

The current review of those sections of the Railway Act and Transport Act that allow railways in this country to collude has several perplexing dimensions. Special interest groups on both buying and selling sides of rail freight service transactions have demonstrated uncharacteristic altruism in the course of this review. For example, a main argument of one group of shippers who advocate continuation of the status quo is the suggestion that it would be unfair to the CPR for the government to remove the competitive wraps from the CNR. Balancing this cross-over concern by some large shippers is the high priority expressed on the carrier side for the continued ability of shippers to form buying groups - and which it is felt could be jeopardized by the abolition of section 279 of the Railway Act. Thus, participants in this review of collective pricing are witnesses to an interesting spectacle in which a main thrust of the railway argument is intended merely to safeguard the current practice of shippers, while the case for the status quo made by certain larger shippers is that it would be unfair to ask a privately-owned railway to compete with an agent of the Crown.

Another equally puzzling side of the argument put forward in defense of the regulatory status quo relates as well to the effects which abolition of section 279 allegedly would create. On the one hand, it is argued that while big shippers on main traffic corridors might benefit, the gains would occur at the expense of captive shippers, who would end up paying more. In other words, removal of section 279 would not be appropriate because of the absence of competition. On the other hand it is argued, for example by those who are concerned about the "Crown" status of the CNR, that the threat of destructive competition on CP Rail rules out removal of section 279. In other words, in the absence of the railways right to collude, competition would be excessive.

Compared with such complex motivational objectives, the competition policy position on collective pricing seems quite straightforward. Collective action by the railways is justified where it can be expected to contribute to the achievement of static and dynamic efficiency. The potential for such gains arises where cost savings are realized from joint production. Indeed, justifiable circumstances for joint action are more obvious in the railways than in most industries. The cost advantage from moving freight over more than one railway requires

provision for through service. Thus, recognition of a desire to insulate certain well-defined aspects of railway operations from inquiry under the Combines Investigation Act raises no problems from the standpoint of competition policy. (Although it should be understood that even if the Combines Act applied in principle, in fact, there would be no question raised under the relevent provision of the Act, as long as the arrangements did not also restrict competition).

Rationale for allowing wide spread collective ratemaking applies only if such efficiency promoting joint action is pervasive. However, the available hard data suggests the contrary. Prof. Heaver reports that interlined traffic, between the CNR and CP Rail, accounted for only 2.2 percent of domestic traffic by rate revenue in 1981 (Heaver, "Competition and Collective Pricing", Table 6). As a result, the argument for pervasive rail collective ratemaking cannot be sustained on the basis of efficiencies derived joint rates and interlining.

Another concern is the extension of this rationale to embrace multimodal (truck/rail) pricing generally and even including all truck express services. Most participants in this review of collective railway pricing

seem to agree on two items: (1) that freedom to collude should not be extended beyond rail operations, and (2) that the provision on agreed charges (section 32(2) of the Transport Act) should be permissive, not compulsory.

IX. CONCLUSIONS: WHAT'S MISSING AND WHAT'S NOT

The main elements of this report are:

i) the presentation of the highlights of a recent representative survey of rail users. This survey establishes that there is a broad consensus among the majority of rail users that collective ratemaking should be restricted to interline (or joint) rates. In addition, the survey shows that there are several relatively peripheral matters that should be considered in the consensus such as agreements on service standards and freight classification and the publication of rates. It also reveals that the CTC and the Combines Investigation Act both have some support as the mechanism for enforcing fair competition;

ii) data from Professor Heaver which shows that interlining accounts for only 2.2% of rail traffic and hence there is little justification for the present legislation and regulations on collective ratemaking and the exchange of information by the railroads which cover the entire scope of the railways activity;

iii) the survey of rail users found that 45 percent of the total freight captive to rail is potentially subject to intramodal (rail-rail) competition. Therefore, competition could be increased with a more important role for interswitching;

iv) A fundamental assumption of the National Transportation Act does not apply and hence the rationale for collective rail pricing cannot be sustained. That is, intermodal (truck-rail) competition is very uneven and does not exist for substantial parts of the freight carried by the railroad. Markets where neither truck nor rail are dominant account for only about 15 percent of total truck-rail freight shipments. Consequently, transport policy must look to intramodal in addition to intermodal competition to ensure that Canada's railroads are efficient and serve the best interests of shippers;

v) many of the arguments used to support the continuation of collective ratemaking have been shown to be invalid or of little consequence. These invalid arguments include the consequences of CNR's status as a Crown corporation and the

possibility that buyers' groups would be at greater risk of prosecution under the Combines Investigation Act if the railroads were forced to give up collective ratemaking.

While it is true that those arguments are persuasive with regard to the need to and appropriateness of substantially eliminating collective rail ratemaking in Canada, it is also true that some relevant information is missing that would improve the ability of the policy analysts and regulators to design the appropriate implementation plan. Perhaps the best example relates to the deregulation of U.S. railways and its implications for Canada. One of the important uncertainties involves the extent of business loss by CN and CP, owing to efficiency gains by U.S. carriers, leading to relatively lower prices, and along with confidential contracts, resulting in the short-hauling of Canadian carriers. Other unknowns include the order of productivity gains achieved by U.S. carriers since 1980 and the extent to which loss of U.S. business, through lower capacity utilization or cross-subsidization exerts upward pressure on domestic rail rates in Canada.

Fortunately, a CTC study of the implications for Canada of U.S. deregulation has been underway for some time and is scheduled for completion early in 1984. Similarly, a study on interswitching has been underway at the CTC for some months and apparently will be completed early in 1984. This analysis can be expected to throw important light on a matter which could go some distance in dealing with the problem faced by shippers who, as a result of interswitching regulations, may have no rail alternative in the movement of their freight. Finally, the EMLA survey and detailed analysis of the inter-relationships between rail users' preferences for alternate policies for rail competition, their economic circumstances (e.g. size, captiveness, industry and location), and their concerns on particular rail issues will be available for distribution in early 1984 as well. The results of this survey, given its representative properties, are likely to be of immediate interest for the formulation of policy in this area of transport.

In circumstances where, (a) based on the information that is available, the arguments and shipper support in favour of regulatory change are persuasive, and yet, (b) where it is recognized at the same time that some important information relevant to implementing a new policy

on collective ratemaking is not yet available, it seems appropriate to await the upcoming outcomes of directly related studies, fill the missing gaps and integrate relevant results. Interested parties could then be invited to participate in the final stages necessary to define the implementation process.

X. RECOMMENDATIONS: WHAT'S NEXT

This submission has presented some important facts on rail freight pricing (including the views of a wide-cross section of Canadian rail users and a fragmentary exploration of the Canadian implications of U.S. rail deregulation) which indicate both the need and support for substantial change in the regulatory status quo. However, this report has drawn attention as well to gaps in the information and analytical base which would contribute to developing an implementation plan and to assessing the impacts and effects of the new policy. For these reasons, two alternatives are clearly ruled out. It would be inappropriate to conclude that the issue of competition in rail freight does not require the attention of policy makers at this time. It would be equally inappropriate to proceed while important studies are pending, and before the impacts and effects of greater liberalization are more fully assessed.

In these circumstances, the most appropriate initiative to bring this policy review to a successfull conclusion would be a recommendation for the Minister of Transport to call on the Canadian Transport Commission to conduct a hearing under section 22 or section 48 of the

National Transportation Act on ways to bring increased competition to the rail freight industry. The agenda for such a hearing would cover, inter alia:

i) reaffirmation of the priority need to provide Canadian shippers with efficient rail freight services;

ii) removing of collective railway pricing for all services except interline (joint) rates;

iii) expanding interswitching limits in order to increase the scope for intramodal competition;

iv) revising rail regulations in Canada in a manner reflecting (a) the significance of the U.S. market for Canadian export, (b) the importance of U.S. rail competition for Canadian carriers and (c) the challenge to Canadian railways arising out of U.S. rail deregulation.

APPENDIX A

"Options Contained in ELMA Survey Question 14"

Option 1: Maintain status quo on 279 and 32(2).

Option 2: No amendment to 279, however 32(2) should be made permissive rather than compulsory.

Option 3: Collective rate-making may continue in all cases except express services and local commodity single line rates.

Option 4: Implement new regulations pursuant to 279 allowing collective rate setting only on through interline (or joint) rates, and collective agreements on service standards and freight classification, all of which would be subject to CTC review and/or public inquiry.

Option 5: Implement regulations as above with the provision of making all such agreements subject to the Combines Act if found to

prevent new sources of competition or designed to unduly lessen existing competitive alternatives.

Option 6: That 279 and 32(2) be amended to allow for only collective arrangements explicitly called for by shipper (i.e. freight buying) groups and that the right of independent action for any railroad be guaranteed.

Option 7: Section 32(2) should be made permissive and any joint railway consultations should be initiated by shippers except in the case of special arrangement tariffs and agreed charges.

Option 8: Appropriate legislative amendments should be made to ensure that collective rate-making is allowed only in cases of joint, or interline, rates requiring the use of more than one carrier. Railways would continue to be responsible for publishing rates, section 23 NTA rate appeals, accountability to the CTC and other current responsibilities.

Option 9: Appropriate legislative amendments creating a deregulated environment with railways relieved of their responsibilities for publishing rates, section 23 NTA rate appeals, accountability to CTC, etc.

APPENDIX B

EXCERPT FROM A SPEECH ON

BUYING GROUPS
BY

L.A.W. Hunter

Director of Investigation and Research

Combines Investigation Act

Before the

Calgary Chamber of Commerce

May 26, 1983

ANTICOMPETITIVE PRACTICES

Conspiracy (32)

First I would like to talk about conspiracy -- agreements among competitors to adversely affect competition at any point in the production and distribution chain. The Act's provisions against conspiracy are the cornerstone of competition legislation.

Section 32 makes it a criminal offence to make an agreement to lessen competition unduly. This applies to competition in the purchase of a product as well as in production, sale, supply or other activities. I want to emphasize that the offence is in the agreement itself. The only question is whether the lessening of competition likely to follow is undue.

When we look at buying groups, we see, by their very nature, that the members have entered into an agreement, the agreement to pool their purchases. This lessens competition in the purchase of a product and it does so by bringing two or more previously independent and competing purchasers together to act as one.

Now such an agreement may also increase competition among rival buyers in other areas of their business, say at the retail level -- but that's not what's at issue here. That would be competition in the sale or distribution of a product. What we're concerned with here is competition in the purchase of a product.

Of course, the critical question which follows is what constitutes an undue lessening of competition in the purchase of a product. Among other things that would depend on the group's leverage in the market as a purchaser -- the degree to which suppliers of products depend on the group's members to reach the final customer, the consumer. I might mention that previous judgements have found a share of a market as small as 54 per cent to be large enough to represent an undue lessening of competition.

We then have to decide on the relevant market. This would have to depend on the circumstances of the case. I can't give any fixed rules, but in many cases we'd probably be looking at a more local or regional market. We'd want to know what proportion of suppliers' products go through the buying group in order to reach the consumer.

A group need not be dominant in its dealings throughout the country to have leverage in its negotiations with suppliers. It could have market power as a purchaser either because it accounted for most of the purchases of products produced in a particular region, or because its members were the major outlets in that region for products produced anywhere. If a group represents an important route of access for products to reach consumers in a particular region, this could give the group considerable market power even against national brand names.

These aren't my only concerns. It also matters how the buyers conduct their business. Various questionable practices in purchasing activities might also give me reason to believe that competition was lessened unduly. Let me give you an example.

A group might be tempted to abuse its market power by putting pressure on suppliers to give it lower prices, pressure which would not work if there were still lively competition among purchasers for the supply of goods: for example, blacklisting a manufacturer because he would not offer a volume incentive program. This would be an agreement to lessen competition in the purchase of a product.

While the very nature of a buying group constitutes an agreement that lessens competition in the purchase of a product, buying groups may also run a risk of conspiracy by reducing competition unduly in activities other than buying. Groups bring together buyers who compete with each other in retailing, wholesaling, or maybe even manufacturing. This could facilitate collusion in areas of business other than the actual purchasing of their supplies and that's a serious concern. Groups offer members the opportunity to exchange information about prices and market shares and the temptation to coordinate business to their mutual advantage in a way which could lessen competition unduly. Group members must be particularly careful to avoid this. Intimacy among rivals isn't to be encouraged, especially if they are already dominant in their market.

The harmonization of prices and promotional strategies, dividing up the market, tying up supplies, creating barriers to entry through pressure on suppliers -- agreements to participate in practices such as these might well constitute an undue lessening of competition at the horizontal level -- the retail level or whatever business the group's members are engaged in.

We've seen consumer groups express their own anxiety about the final outcome at the retail level. For example, I've seen statements in the newspapers which say that while consumers may benefit in the short term from lower prices, there are fears that group buying will inevitably lead to higher retail prices. Well, that fear might be realized if buying groups also manage to reduce competition at the wholesale or retail level. I'm telling you that you have to guard against any such arrangement to do this, to reduce competition at the next level of your business and, indeed, at the purchasing level too. I want to emphasize that the very idea of a continuing relationship between otherwise competing businessmen gives me cause for concern.

I have to admit that there is a fine distinction to be made between searching for the best available price, which is a feature of healthy competition, and channelling or controlling the price, which may be a feature of no competition at all. The point I want to stress is that members of bona fide buying groups should be careful to continue to act independently and competitively in their choice of products and their quest for best prices in their dealings with both suppliers and consumers.

APPENDIX C

SURVEY OF RAILWAY USERS

ON SECTION 279 OF THE RAILWAY ACT

SHIPPER QUESTIONNAIRE

This survey is being conducted on behalf of Consumer and Corporate Affairs Canada in order to solicit your views and experience relating to competition in the Canadian railway industry. Your firm and over 300 others have been selected at random to represent the views of your industry and/or regic.. The information provided by the various respondents during the course of this survey will be treated confidentially and will not be reported in any way that identifies any individual firm.

Please include all of your North American traffic including the continental portions of overseas shipments. Also include traffic which you ship FOB origin for which you pay the freight and are reimbursed by your consignees. Please express all funds in $ Canadian.

Please review the enclosed explanatory material before reviewing the questionnaire. An interviewer will call you shortly to record your responses to the questions. Please undertake to find the numerical information in Part I in advance. Thank you.

A. Please note those industry associations in which your firm is a member.

1. _____ Canadian Manufacturers Association
2. _____ Canadian Industrial Traffic League
3. _____ Canadian Export Association
4. _____ Canadian Federation of Independent Business
5. _____ Other (specify) _____.
6. _____ Other (specify) _____.
7. _____ Other (specify) _____.
8. _____ Other (specify) _____.

B. Would you like a copy of the final report?
_____Yes _____ No_____ # English_____# French

TB/CT-REG.B3506-3

I. TRAFFIC PATTERNS

Questions in Part I are aimed at determining the volume and nature of goods you ship or receive and your asssignment of traffic to different modes and carriers.

1.(a) What are the principal goods your firm ships and receives within Canada and to and from U.S. points?

INBOUND:_____

OUTBOUND:_____

1.(b) In the 1982 calendar year, or your firm's fiscal year (your choice), what was the approximate range of your total gross revenues (sales)?

1)_____less than $1 million
2)_____1 to 5 million
3)_____5 to 25 million
4)_____25 to 50 million
5)_____50 to 100 million
6)_____100 to 250 million
7)_____250 to 500 million
8)_____0.5 to 1.0 billion
9)_____1.0 to 2.5 billion
10)_____2.5 to 5.0 billion
11)_____more than 5 billion

2. Over the same period, how much did your firm spend in Canadian dollars on inbound and outbound rail, truck including private fleet and other transportation of goods moving within Canada?

(a) Inbound	$ From U.S. Points	$ From Points in Canada
Rail		
Truck		
Other		
Total		

(b) Outbound	$ To U.S. Points	$ To Points in Canada
Rail		
Truck		
Other		
Total		

3. From which of the following regions of Canada does your firm ship its products? Please provide a percentage distribution.

_____% British Columbia
_____% Ontario
_____% Maritimes
_____% Prairies
_____% Quebec
Total= 100%

4.(a) How many shipping or receiving stations (i.e. plant/warehouse locations) does your firm have in Canada? _____

(b) How many of these points are situated on the tracks of each railway including public and private sidings?

1)_____Joint CN/CP trackage
2)_____CN only
3)_____CP rail only
4)_____Joint Access CN/CP through interswitching
5)_____No rail access whatsoever.
6)_____Other Canadian railway
7)_____A U.S. railway
8)_____Joint CN/other
9)_____Joint CP/other

Total = answer to 4(a)

5. For approximately what percentage of your inbound and outbound traffic would you say that you had:

i) no viable alternative to rail transportation?
ii) economically viable access to more than one railway?

a) INBOUND	From U.S. points	From points in Canada
i) Captive to Rail	_____%	_____%
ii) Choice of Railways	_____%	_____%

b) OUTBOUND	To U.S. points	To points in Canada
i) Captive to Rail	_____%	_____%
ii) Choice of Railways	_____%	_____%

6. For approximately what percentage of your inbound and outbound rail shipments would you say that you had no viable alternative but to use CN Rail and its affiliated railroads or CP Rail and its affiliated railroads.

a) INBOUND	From U.S. points	From points in Canada
i) Captive to CN Rail	_____%	_____%
ii) Captive to CP Rail	_____%	_____%

b) OUTBOUND	To U.S. points	To points in Canada
i) Captive to CN Rail	_____%	_____%
ii) Captive to CP Rail	_____%	_____%

II. ISSUES IN RAILWAY RATE-MAKING

Part II of this questionnaire seeks your opinions and comments on various aspects of collective versus competitive rail rate making. There are no "right" or "wrong" answers; this is an opinion survey. You are reminded that your responses will be held in strict confidence and that the results will not be presented in any way which identifies any firm. In these circumstances, please feel free to be as frank and direct as you like.

7. In your opinion, in which rate-making circumstances should the railways be allowed to confer (or exhange information, or price collectively) and in which of these cases should the railways be required to publish rates? (Check those with which you agree).

a) For which of these should railways be allowed to confer?		b) For which of these should railways be required to publish tariffs?
_____	1) Class Rates	_____
_____	2) Local Commodity Rates	_____
_____	3) Competitive (Rail) Rates	_____
_____	4) Competitive (Other Mode) Rates	_____
_____	5) Agreed Charges	_____
_____	6) Special Arrangement Tariffs (e.g. Limited Freight Tariffs)	_____
_____	7) General Rate Surcharges	_____
_____	8) Intermodal Rates	_____
_____	9) Transborder Rates	_____
_____	10) Interline Through Rates	_____
_____	11) Combination Rates	_____
_____	12) No rates whatsoever	_____

c) Remarks: _____

_____

_____

8.(a) Is your firm a party to any Agreed Charge with a Canadian railway(s) filed with the Canadian Transport Commission?

_____ Yes _____ No

(b) What percentage of your domestic rail traffic (i.e., traffic originating in Canada) moves at rates published in Agreed Charge tariffs? _____ %

(c) Is your firm a party to any Contract with an American railway filed with the Interstate Commerce Commission for any of your transborder shipments?

_____ Yes _____ No

(d) What percentage of your transborder traffic moves at rates governed by contracts with U.S. railroads? _____%

(e) Which of the following two statements more closely reflects your views on agreed charge contracts: (check one)

_____ 1) The current practices of mandatory railway agreement, publication, and free shipper access to agreed charges should be continued.

_____ 2) Individual shippers and carriers should have the right to negotiate independently exclusive and confidential terms in rate contracts.

9. Some Canadian shippers using rail services to ship and receive goods to and from the United States claim to have been positively or negatively affected by the rail deregulation measures introduced by the Staggers Act of 1980 and the 4R Act of 1976.

(a) If you are a transborder shipper what effect has U.S. rail deregulation had on your firm?

(b) If comparable legislation preventing railways from taking collective pricing action in Canada were implemented, what effects would you expect in relation to your domestic traffic?

Please rate each of the following impact areas or effects on a 1 to 5 basis with 1 meaning "situation much worse" and 5 meaning "situation much improved".

	a) Effects Experienced under U.S. Dereg.	b) Effects Expected from Comparable Canadian Legislation
1) Rate levels	_____	_____
2) Availability of through rates	_____	_____
3) Availability of routing alternatives	_____	_____
4) Availability of equipment on demand	_____	_____
5) Terms and conditions of carriage	_____	_____
6) Speed of railways in quoting rates	_____	_____

7) Negotiating time and expense for shippers	_____	_____
8) Railway innovation and responsiveness to individual shipper's needs	_____	_____
9) Railway efficiency and productivity	_____	_____
10) Extent of railway liability	_____	_____
11) Shipper's competitive position	_____	_____
12) Other_____	_____	_____

10. The view has been put forth that railways should be relieved of certain responsibilities in the event they are no longer permitted to collectively set rates. In a deregulated or competitive rate-making environment, should the railways ....?

Yes	No	
_____	_____	1) Publish rates
_____	_____	2) Submit to rate appeals under Section 23 of the National Transportation Act
_____	_____	3) Be obliged to carry all freight offered (common carrier obligation)
_____	_____	4) Account to a body such as the Canadian Transport Commission on any matter other than safety
_____	_____	5) Continue providing interswitching services within a four mile limit at no extra charge
_____	_____	6) Submit to rate prescriptions of CTC in cases of proven shipper captivity (278 of the Railway Act)
_____	_____	7) Other_____

11. The following statements reflect a number of views relative to the appropriate degree of railway competitiveness in Canada. Please note your degree of agreement with each statement by using a 1 to 5 rating with 1 meaning "strongly disagree" and 5 meaning "strongly agree".

_____ 1) Competition between railways acting independently is necessary to encourage innovation and efficiency leading to flexible and innovative service and pricing actions as well as research and development.

_____ 2) Competition between railways would negatively affect their commercial viability by reducing railway earnings and endangering the provision of adequate and efficiently supplied railway services.

_____ 3) Increased intra-modal railway competition would favour shippers located at competitive points while resulting in higher rates for rail dependent shippers at captive points.

_____ 4) Collective pricing serves carriers and shippers well, is beneficial for small shippers, and facilitates consideration of the reasonableness of rate relationships.

12. To what extent have you been experiencing competition or rivalry between modes and between railways for your traffic? Please rate your agreement or disagreement with the following statements on a 1 to 5 basis as in #11 above.

_____1) Canadian railways currently compete vigorously with each other for my traffic.

_____2) Canadian railways compete with each other much more today than they did five years ago.

_____3) Canadian railways currently compete vigorously with truckers for my traffic.

_____4) Canadian railways compete with truckers much more today than they did five years ago.

13. In your opinion, who is best able to protect shippers' interests with respect to railways? Provide each of the choices below with a 1 to 5 rating, assigning a 1 to those choices you consider "least able" and a 5 to those choices you consider "best able" to protect shippers' interests.

_____1) Canadian Transport Commission
_____2) Industry Associations
_____3) Individual Shippers Themselves
_____4) Director, Combines Act
_____5) Individual Railways
_____6) Freight Clubs or Freight Buying Groups
_____7) Provincial Government Agency

14. Based on your personal experience and beliefs, please evaluate, on a scale of 1 to 5 (1 = least desirable, 5 = most desirable), the following options or alternatives for ensuring adequate and appropriately priced rail freight services. Please refer to the attached explanatory material for quotations from legislation.

_____1) Maintain status quo on 279 and 32(2)
_____2) No amendment to 279, however 32(2) should be made permissive rather than compulsory.
_____3) Collective rate-making may continue in all cases except express services and local commodity single line rates.
_____4) Implement new regulations pursuant to 279 allowing collective rate setting only on through interline (or joint) rates, and collective agreements on service standards and freight classification, all of which would be subject to CTC review and/or public inquiry.
_____5) Implement regulations as above with the provision of making all such agreements subject to the Combines Act if found to prevent new sources of competition or designed to unduly lessen existing competitive alternatives.

_____6) That 279 and 32(2) be amended to allow for only collective arrangements explicitly called for by shipper (i.e. freight buying) groups and that the right of independent action for any railroad be guaranteed.

_____7) Section 32(2) should be made permissive and any joint railway consultations should be initiated by shippers except in the case of special arrangement tariffs and agreed charges.

_____8) Appropriate legislative amendments should be made to ensure that collective rate-making is allowed only in cases of joint, or interline, rates requiring the use of more than one carrier. Railways would continue to be responsible for publishing rates, section 23 NTA rate appeals, accountability to the CTC and other current responsibilities.

_____9) Appropriate legislative amendments creating a deregulated environment with railways relieved of their responsibilities for publishing rates, Section 23 NTA rate appeals, accountability to CTC, etc.

15. Were you familiar with most of the issues dealt with in the questionnaire and the attached explanatory material prior to having received it?

_____ Yes _____ Somewhat _____ No

16. Thank you for taking the time to complete this questionnaire. Please use the space to make any further comments on railway competition, regulation, collective pricing or general railway transportation matters of concern to you and your firm.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

SUMMARY OF THE POSITION OF SHIPPERS OPPOSING COLLECTIVE PRICING BY RAILWAYS

Shippers opposing legal arrangements permitting railways to set rates collectively and favouring a competitive or "deregulated" environment consider that competition encourages innovation and efficiency and that the railway industry deserves no special exemption from laws governing competition which their clients are subject to. This stance is taken by some shippers which have experienced what they consider to be positive effects from the deregulated rail transportation environment in the U.S. Shippers in this category would propose that, local commodity rates, competitive rates, agreed charge rates, intermodal and international (or transborder) rates all be determined independently and competitively. With regard to joint rates, it is felt that consultations should be restricted to only those rail carriers actually participating in the movement.

Concerning potential negative effects of removing the railways' right to price collectively, shippers in this group do not feel that shippers at competitive points would benefit at the expense of captive shippers. Rather their experience in the U.S. market indicates to them that an advantage gained at a competitive point is generally extended to non-competitive points. Further, as regards to intermodal services, the introduction of competitive rail rate-making would be expected to result in new options for shippers at non-competitive points. Finally, shippers favouring a deregulated Canadian rail rate-making environment suggest that the special terms they could negotiate in confidential non-published railway contracts would improve their position relative to their American competitors.

SUMMARY OF THE POSITION OF SHIPPERS FAVOURING RETENTION OF LEGAL ARRANGEMENTS ALLOWING RAILWAYS TO MAKE RATES COLLECTIVELY

Shippers favouring the continuation of the status quo believe that present arrangements allowing Canadian railways to price their services in consultation with one another work very well and serve the mutual interests of shippers and railways. Proponents of this view submit that if legislative changes are made prohibiting collective rail pricing, railways should be relieved of certain responsibilities such as rate publication, interswitching, submitting to CTC hearings, orders and rate prescriptions, etc...Shippers in this category feel that permissive collective pricing should continue to be allowed for class rates, joint rates, local commodity rates, competitive rates, agreed charges, intermodal rates and rates for international or transborder traffic.

The view is held that the creation of a deregulated environment in which railways were required to price competitively (rather than collectively) would result in preferential rates for users in competitive locations at the expense of captive users which, being served by only one railroad, would have little or no bargaining power. Another concern relates to the protection of the right of a shipper of any size to take advantage of agreed charge rates usually negotiated between railways and large shippers. In a deregulated, competitive rate-making environment it is expected that the terms of agreed charge contracts would be held confidential and closed to the participation or even knowledge of parties outside the agreement. A final argument in favour of retaining current arrangements is that present rate determination/negotiation systems are simple, straighforward and cost-effective whereas a competitive environment would require major additional negotiating time and expense for traffic managers.